

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of

Petition for Arbitration of an Interconnection
Agreement Between Charter Fiberlink MA-
CCO, LLC, and Verizon Massachusetts Inc.

D.T.E. Docket No. 06-56

REPLY OF VERIZON MASSACHUSETTS
TO CHARTER'S SUPPLEMENT TO ITS ARBITRATION PETITION

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TABLE OF CONTENTS

	<u>Page</u>
I. Introduction and Summary.	1
II. Charter’s Supplement Fails to Clarify the Difference Between a SONET Terminal and an Add/Drop Multiplexer.	2
III. Charter’s Second New Proposed Fiber Meet Amendment Raises Three New Issues That Were Not Listed in Its Petition.....	3
Charter’s Issue 5(b): Use of Multiple Terminals in a Ring Configuration	4
Charter’s Issue 5(c): Required Notice of Upgrade or Change to Fiber Meet Equipment.....	4
Charter’s Issue 5(d): Compensation for Construction and/or Implementation Expenses Generated by a Move or Change to the Fiber Meet Arrangement.....	6
IV. CONCLUSION	8

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I. Introduction and Summary

Although Charter captions its latest filing as a “supplement” to its Petition for Arbitration,¹ it is in fact an amendment to Charter’s petition. Rather than simply clarifying its position on one issue in its petition, as the Department requested, Charter has raised three new unrelated issues (*i.e.*, 5(b), 5(c) and 5(d)) and submitted yet another new draft fiber meet amendment. These new issues were never discussed with Verizon during negotiations, nor was Charter’s new proposed contract language ever provided to Verizon during negotiations.

Verizon Massachusetts Inc. (“Verizon MA”) has already moved to dismiss Charter’s petition because none of the issues listed in its petition is subject to the Telecommunications Act’s arbitration provisions. That motion is still pending. Verizon

¹ Supplement to the Petition of Charter Fiberlink MA-CCO, LLC for Arbitration of an Amendment to the Interconnection Agreement Between Verizon Massachusetts Inc. and Charter Fiberlink MA-CCO, LLC Pursuant to Section 252 of the Communications Act of 1934, as Amended filed July 26, 2006 (“Charter Supplement”).

MA now requests that the Department strike the new issues raised in Charter's Supplement because they are untimely. Under the Act, "[a] party that petitions a State commission under paragraph (1) shall, *at the same time as it submits the petition*, provide the State commission all relevant documentation concerning - (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties." 47 U.S.C. 252(b)(2)(emphasis supplied). Now, more than a month after it filed its petition, Charter has changed its mind and is attempting to open issues that it had indicated in its petition were resolved. Nothing in the Act authorizes a petitioner to raise entirely new issues in an arbitration proceeding after it files its petition. The Department should not allow Charter to expand this arbitration by raising three new issues at this late date.

Moreover, Charter's attempt to clarify Issue No. 5 from its petition (now numbered as Issue No. 5(a) in Charter's Supplement) still fails to explain the basis for Charter's proposal. The Department should reject Charter's proposed language on this issue and find that the language proposed by Verizon MA is reasonable and appropriate for the parties' fiber meet amendment.

II. Charter's Supplement Fails to Clarify the Difference Between a SONET Terminal and an Add/Drop Multiplexer

In its response to Issue No. 5 in Charter's petition, Verizon MA stated that Charter has not provided sufficient information for Verizon MA to respond because this issue was never raised during the parties' negotiations and Charter has not provided a definition of "SONET Terminal" or explained how a SONET Terminal differs from an Add/Drop Multiplexer. In the Charter Supplement, Charter suggests that there isn't really any difference between the equipment described by these two terms: "the Parties

seem to contemplate the same functionality, but have different labels for the equipment that provides that functionality.” *See* Charter Supplement at 3. Charter’s real concern appears to be clarifying that the fiber meet equipment will be SONET equipment.

Verizon MA expects that Charter and Verizon MA will use SONET equipment in any fiber meet arrangement. In fact, the draft fiber meet amendment provided by Verizon MA already contemplates the use of SONET equipment. *See* Supplemental Response of Verizon Massachusetts filed July 26, 2006, Exhibit 3, Section 3.3 of Exhibit A (“Terminating equipment shall comply with [SONET transmission requirements as specified in Telcordia Technologies document GR-253 CORE (Tables 4-3 through 4-11)]”). There is therefore nothing to clarify with respect to the use of SONET equipment.

In an effort to address Charter’s concern, Verizon MA would be willing to replace the term “Add/Drop Multiplexer” with the term “SONET-capable Add/Drop Multiplexer.” This change would eliminate any question about the use of SONET equipment in fiber meet arrangements with Charter.

III. Charter’s Second New Proposed Fiber Meet Amendment Raises Three New Issues That Were Not Listed in Its Petition

Exhibit 1 to Charter’s Supplement is yet another new proposed fiber meet amendment that differs from the proposed fiber meet amendment Charter submitted with its petition. As explained above, it is far too late for Charter to raise new issues in this arbitration because Charter had a duty to identify all resolved issues and all unresolved issues at the time it filed its petition. Accordingly, the Department should strike Issue Nos. 5(b), 5(c) and 5(d) from the Charter Supplement.

If the Department nonetheless includes these three new issues in this arbitration and considers Charter’s second new proposed fiber meet amendment, the Department

should not adopt Charter's new proposals. As explained below, none of these new proposals has merit.

Charter's Issue 5(b): Use of Multiple Terminals in a Ring Configuration

Verizon MA's Response: In the Charter Supplement, Charter proposes for the first time that it be allowed to install multiple nodes on any fiber meet arrangement. *See* Charter Supplement at 3-4. Charter, however, does not explain why it needs to install more than one node on a fiber meet arrangement. In each fiber meet arrangement Verizon MA has constructed, each party has only one node in the arrangement. In these arrangements, each party is able to interconnect and exchange traffic with the other party.

One conceivable use of multiple nodes in a fiber meet arrangement could be to establish connectivity between two or more Charter locations or nodes. Such a use of a fiber meet arrangement would be solely for Charter's benefit for connection between multiple components of Charter's network and would not be for interconnection with Verizon MA. Verizon MA should not be required to incur the cost of fiber meet arrangements that are used for connectivity between Charter's network components.

For these reasons, the Department should order that Verizon MA's language on ring architecture be included in the parties' fiber meet amendment. *See* Verizon MA Exhibit 3, Section 3.1 of Exhibit A.

Charter's Issue 5(c): Required Notice of Upgrade or Change to Fiber Meet Equipment

Verizon MA's Response: In the Charter Supplement, Charter has for the first time proposed that Charter provide only 7 days, rather than 14 days, advance notice of firmware upgrades to Verizon MA. *See* Charter Supplement at 4. In addition, Charter proposes that the notice only indicate the date of the upgrade without any description

whatsoever of the firmware upgrade. *Id.* Charter's proposal would create a substantial risk that a fiber meet arrangement will fail as a result of a firmware upgrade.

When Verizon MA receives notice of a firmware upgrade regarding a carrier's equipment on a fiber meet arrangement, Verizon MA typically sends that notice to the supplier of the equipment on Verizon MA's portion of that same fiber meet arrangement. Verizon MA's equipment may be different from Charter's equipment, and Verizon MA's supplier would need to analyze the firmware upgrade for compatibility issues. If Verizon MA's supplier determines that Verizon MA's equipment would need a corresponding firmware upgrade in order to continue exchanging traffic with Charter, the supplier would make arrangements for that firmware upgrade.

Charter's proposal would not only shorten the notice interval for firmware upgrades from 14 days to 7 days, but would also eliminate the description of the firmware upgrade from that notice. Without a description of the firmware upgrade, the analysis by Verizon MA's supplier would be more difficult, if not impossible. Charter suggests that a description of the firmware upgrade could be requested after receiving the notice. However, forcing the parties to request such a description, rather than providing it with the notice, will simply delay the analysis of the firmware upgrade. Charter's proposed change to the firmware notice requirement will simply add unnecessary steps and delay to the process of analyzing Charter's firmware upgrades.

If a firmware upgrade is required for Verizon MA's equipment, Verizon MA's firmware upgrade must be completed at the same time as Charter's firmware upgrade in order to ensure that Charter and Verizon MA can continue to exchange traffic. Seven days is likely not enough time for Verizon MA's equipment supplier to obtain a

description of Charter's firmware upgrade, analyze that upgrade and, if necessary, make arrangements for and complete a firmware upgrade to Verizon MA's equipment. Verizon MA and Charter should instead provide 14 days notice of firmware upgrades and include a description of the firmware upgrade. Moreover, Charter has not identified how it is harmed by providing 14 days notice of firmware upgrades.

For these reasons, the Department should order that Verizon MA's proposed language on firmware upgrades be included in the parties' fiber meet amendment. *See* Verizon MA Exhibit 3, Sections 4.1 and 4.2 of Exhibit A.

Charter's Issue 5(d): Compensation for Construction and/or Implementation Expenses Generated by a Move or Change to the Fiber Meet Arrangement

Verizon MA's Response: Where one party requests that the other party move or change a fiber meet arrangement, the requesting party is causing the other party to incur the cost of such move or change and the requesting party should reimburse the other party for such costs. In the Charter Supplement, Charter has proposed for the first time an exception to this principle for situations where the move or change is due to a government order. *See* Charter Supplement at 5. In other words, if Charter requests that Verizon MA move or change a fiber meet arrangement because a governmental entity revoked Charter's right-of-way, Charter would not have to reimburse Verizon MA for its costs of the move or change.

Charter's proposal would inappropriately shift costs away from the cost causer. Where a governmental order affects only one party, that party is the cost causer and should bear the other party's cost of the move or change. However, where a governmental order directs both parties to move or change the fiber meet arrangement

(for example, in the case of a road-widening project), neither party is the cost causer and each party should bear its own costs. In the latter case, neither party is “requesting” a change or move from the other party. Rather, the parties are mutually changing or moving their fiber meet arrangement.

For these reasons, the Department should order that Verizon MA’s proposed language on compensation for moves and changes to a fiber meet arrangement be included in the parties’ fiber meet amendment. *See* Verizon MA Exhibit 3, Section 8.3.

IV. CONCLUSION

The Department should strike the new issues raised in the Charter Supplement because they are untimely. If the Department nonetheless proceeds with arbitration of those new issues, the Department should order that the parties' fiber meet amendment include all of the language proposed by Verizon MA (in Verizon MA Exhibit 3) and none of the language that Charter has proposed.

Respectfully submitted,

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